

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 18th day of August, two thousand and six.

PRESENT:

HON. GUIDO CALABRESI,
HON. SONIA SOTOMAYOR,
HON. RICHARD C. WESLEY,
Circuit Judges.

Wen Ling Zou, also known as Wen Lin Zou,
Petitioner,

v.

No. 05-5379-ag
NAC

United States Department of Justice,
Attorney General Alberto R. Gonzales,
Respondents.

FOR PETITIONER: Bruno Joseph Bembi, Hempstead, New York.

FOR RESPONDENT: Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, Laura Schleich Irwin, Assistant United States Attorney, Natalie Rieland, Paralegal Specialist, Pittsburgh, Pennsylvania.

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of

1 Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED, that the
2 petition for review is DENIED.

3 Petitioner Wen Ling Zou, a native and citizen of the People’s Republic of China, seeks
4 review of a September 15, 2005 order of the BIA affirming the May 11, 2004 decision of
5 Immigration Judge (“IJ”) Sandy Hom denying her applications for asylum, withholding of
6 deportation, and relief under the Convention Against Torture (“CAT”). *In re Wen Ling Zou*, No.
7 A73 557 760 (B.I.A. Sept. 15, 2005), *aff’g* No. A73 557 760 (Immig. Ct. N.Y. City May 11,
8 2004). We assume the parties’ familiarity with the underlying facts and procedural history of the
9 case.

10 Where, as here, the BIA affirms and concurs with the IJ in a brief decision, it is
11 appropriate to review the IJ’s decision directly. *See Secaida-Rosales v. INS*, 331 F.3d 297, 305
12 (2d Cir. 2003). Legal questions, and application of fact to law, are reviewed *de novo*. *See id.* at
13 307. This Court reviews the agency’s factual findings, including adverse credibility
14 determinations, under the substantial evidence standard. 8 U.S.C. § 1252(b)(4)(B); *see, e.g.*,
15 *Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004).

16 In this case, substantial evidence supports the IJ’s adverse credibility finding, which was
17 based largely on the major contradiction between Zou’s testimony in 1995 that she fled China to
18 avoid sterilization, and her testimony in 2004, after her case was reopened, that she had been
19 forcibly sterilized in 1991. This contradiction was sufficiently blatant and critical to her claim
20 that the IJ would have been justified in finding her incredible even without demanding further
21 explanation. *See Majidi v. Gonzales*, 430 F.3d 77, 80 (2d Cir. 2005). Moreover, Zou’s attempts
22 to explain the contradiction failed to rehabilitate her credibility. She insisted that she told the IJ

1 in 1995 that she had been sterilized, although the transcript of the 1995 hearing reflects that she
2 stated exactly the opposite, and repeatedly claimed to fear sterilization if returned to China. The
3 1995 testimony also undermines her attempt to attribute any errors in her application to the
4 preparer, as does her husband's asylum application, which contains the exact same discrepancy
5 although it was prepared by a different individual. Contrary to Zou's contentions in her brief, we
6 find the evidence of contradictory statements to be unambiguous, and further reject her claims of
7 due process violations, which are merely reworded challenges to the IJ's adverse credibility
8 determination. *Cf. Bugayong v. INS*, 442 F.3d 67, 72 (2d Cir. 2006). As the evidence strongly
9 suggests that Zou was, in fact sterilized – but does not establish that the procedure took place in
10 China, or was forced – and Zou failed to establish an objectively reasonable fear of other harm in
11 China, on any ground, substantial evidence also supports the IJ's denial of withholding and CAT
12 relief. *See Paul v. Gonzales*, 444 F.3d 148, 155-57 (2d Cir. 2006); *Ramsameachire v. Ashcroft*,
13 357 F.3d 169, 183-85 (2d Cir. 2004).

14 _____ For the foregoing reasons, the petition for review is DENIED.

16 FOR THE COURT:
17 Roseann B. MacKechnie, Clerk

18 By: _____
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